HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 251 of 2007

Petitioner : Avanish Kumar Chouhan

Versus

Respondents : Vijay Krishna Mishra

Shri A. K. Prasad, Advocate for the petitioner.

ORDER

(Passed on this 27th day of February, 2007)

1. By this petition filed under Article 227 of the Constitution of India the petitioner challenges the validity of the order dated 14.11.2006 (Annexure P/1) and the order dated 9.1.2007 (Annexure P/2) passed in Civil Suit No. 1-B/2006 by the Additional District Judge, Gariaband, District Raipur.
2. The case of the petitioner is that the petitioner has filed a Civil Suit No. 1-B/2006 for recovery of money on the basis of the unregistered sale deed dated 4.8.2003, for a consideration of Rs. 2,70,000/- for purchase of a house and a land admeasuring 10150 sq. feet, situated at village Gariyaband, District- Raipur. The said sale deed was required to be duly registered after taking the due permission from the Collector.
3. The land being in scheduled area vested in the State Government under the provisions of Section 165 (6) of the C.G. Land Revenue Code, 1959 (for short 'the Land Revenue Code'). Thus, without permission of the Collector, the said disputed land could not be transferred in favour of the petitioner. The purported document of sale deed was accordingly not

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registered. According to learned counsel it could not be registered due to the lack of permission from the Collector.

4. The respondent filed an application under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 and Section 35 of the Indian Stamp Act, 1899 (for short 'the Stamp Act') for rejection of the plaint on the ground that though the suit for the relief claimed was properly valued, but the insufficient stamp duty was paid on the unregistered sale deed. The trial Court directed the Registrar to determine the amount for impounding the unregistered sale deed. The Deputy Registrar in reply submitted that on calculation the stamp duty comes to Rs. 23926.50 and on that amount 10 times penalty at the minimum rate of Rs. 5/- be imposed.

5. The trial Court held that as per Schedule 5 of Article 23 of the Stamp Act, the plaintiff (petitioner) is required to pay a court fees at the rate of 7.50% of the total value of the suit and further to pay 10 times penalty as per Section 35 of the Stamp Act, thereby the plaintiff (petitioner) was required to pay a sum of Rs. 2,01,900/- as Court fees.

6. The petitioner - plaintiff had already paid a sum of Rs. 20850/- for impounding the unregistered sale deed. Learned counsel submits that no stamp duty is payable on an unregistered document if the same is used for the collateral purpose. In support of his contention learned counsel relied on a decision of the Hon'ble Supreme Court in the case of **Bondar Singh and others Vs. Nihal Singh and others** { (2003) 4 SCC 161}. The facts of that case were entirely different. In that case the question for consideration was asto whether the plaintiffs were in hostile continuous possession of the suit lands by virtue of which they had perfected their title to the land by adverse possession. On the basis of the continuous possession of the plaintiffs over the suit land, since 1931

the unregistered sale deed was required in the evidence for collateral purpose for establishing their possession over the land. In that case Hon'ble Supreme Court held as under:-

> "5. .....The sale deed dated 9.5.1931 by Fakir Chand, father of the defendants in favour of Tola Singh, the predecessor-in-interest of the plaintiffs, is an admitted document in the sense its execution is not in dispute. The only defence set up against the said document is that it is unstamped and unregistered and therefore it cannot convey title to the land in favour of the plaintiffs. Under the law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present case the collateral purpose to be seen is the nature of possession of the plaintiffs over the suit land....."

7. In the present case, the entire claim of recovery of money is on the basis of the unregistered sale deed which has to be registered under the provisions of Section 49 of the Registration Act, 1908. The non payment of the stamp duty amounts to causing loss to the government which is not permissible under the law.

8. I have gone through the impugned orders and other documents appended thereto. I do not find any justification in interfering with the impugned orders passed by the Additional District Judge, Gariaband, District Raipur.

9. The impugned orders are unexceptionable. Thus this Court, in exercise of its supervisory powers under Article 227 of the Constitution of India, is not inclined to interfere with the impugned order. There is no infirmity, illegality or lack of jurisdiction in passing the orders. This petition is accordingly dismissed, summarily.

Sd/-
Satish K. Agnihotri
Judge

Thakur